

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 23, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARIA N.,

Plaintiff,

v.

MARTIN O'MALLEY,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:23-CV-3056-JAG

ORDER GRANTING
PLAINTIFF'S MOTION
TO REVERSE THE DECISION
OF THE COMMISSIONER

BEFORE THE COURT are Plaintiff's Opening Brief and the Commissioner's Brief in response. ECF Nos. 10, 14-2. Attorney D. James Tree represents Maria N. (Plaintiff); Special Assistant United States Thomas E. Chandler represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before the undersigned by operation of Local Magistrate Judge Rule (LMJR) 2(b)(2), as no party returned a Declination of Consent Form to the Clerk's Office by the established deadline. ECF No. 3.

After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Plaintiff's motion to reverse the decision of the Commissioner, **DENIES** Defendant's motion to affirm, and **REMANDS** the matter for further proceedings under sentence four of 42 U.S.C. § 405(g).

I. JURISDICTION

Plaintiff filed an application for a period of disability and disability insurance benefits on January 26, 2015, and an application for supplemental security income on March 22, 2017, alleging disability since January 26, 2015. The applications were denied initially and upon reconsideration. Administrative Law Judge (ALJ) M.J. Adams held a hearing on December 18, 2019, and issued an unfavorable decision on March 10, 2020. Tr. 18-36. This Court subsequently remanded the matter on October 6, 2021. Tr. 2472-78. ALJ C. Howard Prinsloo held a second hearing on January 24, 2023, and issued a partially favorable decision on February 8, 2023. Tr. 2380-2401. Plaintiff appealed this final decision of the Commissioner on April 25, 2023. ECF No. 1.

II. STANDARD OF REVIEW

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)).

If the evidence is susceptible to more than one rational interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at 1098; *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

1 If substantial evidence supports the administrative findings, or if conflicting
2 evidence supports a finding of either disability or non-disability, the ALJ's
3 determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th
4 Cir. 1987). Nevertheless, a decision supported by substantial evidence will be set
5 aside if the proper legal standards were not applied in weighing the evidence and
6 making the decision. *Browner v. Sec'y of Health and Human Services*, 839 F.2d
7 432, 433 (9th Cir. 1988).

8 **III. SEQUENTIAL EVALUATION PROCESS**

9 The Commissioner has established a five-step sequential evaluation process
10 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
11 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987). At steps one through
12 four, the claimant bears the burden of establishing a prima facie case of disability.
13 *Tackett*, 180 F.3d at 1098-99. This burden is met once a claimant establishes that a
14 physical or mental impairment prevents the claimant from engaging in past
15 relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot
16 perform past relevant work, the ALJ proceeds to step five, and the burden shifts to
17 the Commissioner to show: (1) the claimant can make an adjustment to other
18 work; and (2) the claimant can perform other work that exists in significant
19 numbers in the national economy. *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir.
20 2012). If a claimant cannot make an adjustment to other work in the national
21 economy, the claimant will be found disabled. 20 C.F.R. §§ 404.1520(a)(4)(v),
22 416.920(a)(4)(v).
23

24 **IV. ADMINISTRATIVE FINDINGS**

25 On February 8, 2023, the ALJ issued a decision finding Plaintiff disabled as
26 of December 18, 2018, but not disabled at any time through March 31, 2017, the
27 date last insured. Tr. 2380-2401.
28

1 At *step one*, the ALJ found Plaintiff had not engaged in substantial gainful
2 activity since the alleged onset date. Tr. 2384.

3 At *step two*, the ALJ determined Plaintiff had the following severe
4 impairments: degenerative disc disease of the lumbar spine, degenerative disc
5 disease of the cervical spine, right shoulder disorder, obesity, and fibromyalgia.
6 Tr. 2384.

7 At *step three*, the ALJ found these impairments did not meet or equal the
8 requirements of a listed impairment. Tr. 2386-87.

9 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and
10 determined that, as relevant here,¹ prior to December 18, 2018, Plaintiff could
11 perform light work subject to the following additional limitations: she could
12 occasionally stoop; frequently climb, balance, kneel, crouch, and crawl; and could
13 have no concentrated exposure to vibration. Tr. 2388.

14 At *step four*, the ALJ found Plaintiff could perform past relevant work as an
15 order clerk, receptionist, agricultural sorter, and registration clerk. Tr. 2399.

16 The ALJ thus concluded Plaintiff was not disabled at any time through
17 March 31, 2017, the date last insured. Tr. 30.

18 V. ISSUES

19 The question presented is whether substantial evidence supports the ALJ's
20 decision denying benefits and, if so, whether that decision is based on proper legal
21 standards.

22 Plaintiff raises the following issues for review: (A) whether the ALJ
23 improperly evaluated the medical opinion evidence; (B) whether the ALJ erred by
24 _____

25
26 ¹ The Court's recitation of the ALJ's decision omits the ALJ's findings concerning
27 the period beginning December 18, 2018, *i.e.*, the date on which the ALJ
28 concluded Plaintiff became disabled.

discounting Plaintiff's testimony; (C) whether the ALJ erred at step one; and (D) whether the ALJ erred by failing to include manipulative limitations in the RFC. ECF No. 10 at 2.

VI. DISCUSSION

A. Medical Evidence.

Because Plaintiff filed her application before March 27, 2017, the ALJ was required to generally give a treating doctor's opinion greater weight than an examining doctor's opinion, and an examining doctor's opinion greater weight than a non-examining doctor's opinion. *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014). An ALJ may only reject the contradicted opinion of a treating or examining doctor by giving "specific and legitimate" reasons. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017). "Only physicians and certain other qualified specialists are considered '[a]cceptable medical sources.'" *Ghanim v. Colvin*, 763 F.3d 1154, 1161 (9th Cir. 2014) (alteration in original). An ALJ may reject the opinion of a non-acceptable medical source by giving reasons germane to the opinion. *Id.* An ALJ may reject the opinion of a non-examining physician by reference to specific evidence in the medical record. *Sousa v. Callahan*, 143 F.3d 1240, 1244 (9th Cir. 1998) (citations omitted). Plaintiff argues the ALJ misevaluated five medical opinions. ECF No. 10 at 13-19. The Court addresses each in turn.

1. *Corinna Michels, ARNP.*

The ALJ found ARNP Michels, one of Plaintiff's treating clinicians, opined, among other things, Plaintiff had "marked limitations in sitting, standing, walking, lifting, carrying, handling, pushing, pulling, reaching, stooping, and crouching due to fibromyalgia and lumbago and stenosis with sciatica," and "could perform sedentary work." Tr. 2395. The ALJ accorded her opinions "little weight." Tr. 2395.

1 The ALJ first discounted the opinions on the ground “physical examination
2 findings documented in her treatment notes were often normal, including on the
3 day she rendered these opinions.” Tr. 2395. Considering Plaintiff’s fibromyalgia,
4 this finding is legally erroneous. The Ninth Circuit has held that “[i]n evaluating
5 whether a claimant’s residual functional capacity renders them disabled because of
6 fibromyalgia, the medical evidence must be construed in light of fibromyalgia’s
7 unique symptoms and diagnostic methods ... The failure to do so is error.” *Revels*,
8 874 F.3d at 662. *Revels* instructs that “mostly normal results” of objective tests
9 “are perfectly consistent with debilitating fibromyalgia.” *Id.* at 666. Indeed, in the
10 context of a fibromyalgia claimant, an ALJ’s citation to “normal muscle strength,
11 tone, and stability, as well as a normal range of motion” is “erroneous.” *Id.*; *see id.*
12 at 663 (“A person with fibromyalgia may have muscle strength, sensory functions
13 and reflexes that are normal.”) (cleaned up). The ALJ thus erred by discounting
14 the opinions on this ground.

15 The ALJ next discounted the opinions on the ground “these limitations
16 appear to rely heavily on the claimant’s subjective complaints.” Tr. 2395. Again,
17 considering Plaintiff’s fibromyalgia, this finding is legally erroneous. The Ninth
18 Circuit has made clear that fibromyalgia is evaluated “entirely on the basis of
19 patients’ reports of pain and other symptoms.” *Benecke v. Barnhart*, 379 F.3d 587,
20 590 (9th Cir. 2004). Further, the record indicates the opinions were based on
21 clinical observations and does not indicate ARNP Michels found Plaintiff to be
22 untruthful. Therefore, this is no evidentiary basis for rejecting the opinion. *Cf.*
23 *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1199–1200 (9th Cir. 2008) (noting an
24 ALJ does not validly reject a doctor’s opinion “by questioning the credibility of the
25 patient’s complaints where the doctor does not discredit those complaints and
26 supports his ultimate opinion with his own observations”). The ALJ thus erred by
27 discounting the opinions on this ground.
28

1 Finally, the ALJ discounted the opinions as inconsistent with “other
2 evidence in the file, including the longitudinal treatment record, imaging studies,
3 and physical examination findings noted by other medical providers[.]” Tr. 2395.
4 This reasoning is legally erroneous. An ALJ’s rejection of a clinician’s opinion on
5 the ground that it is contrary to largely unspecified or unelaborated evidence in the
6 record, as here, is “broad and vague,” and fails “to specify why the ALJ felt the
7 [clinician’s] opinion was flawed.” *McAllister v. Sullivan*, 888 F.2d 599, 602 (9th
8 Cir. 1989); *see also Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (rather
9 than merely stating their conclusions, ALJs “must set forth [their] own
10 interpretations and explain why they, rather than the doctors’, are correct”) (citing
11 *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)). It is not the job of the
12 reviewing court to comb the administrative record to find specific conflicts.
13 *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014). The ALJ thus erred by
14 discounting the opinions on this ground.

15 The ALJ accordingly erred by discounting these opinions.

16 **2. Myrna Palasi, M.D.**

17 The ALJ found Dr. Palasi, who reviewed Plaintiff’s records, opined “that the
18 severity of the claimant’s conditions rendered her unable to sustain a forty-hour
19 workweek, noting that the claimant had generalized weakness of the lower
20 extremities and tender points and recommending less than sedentary residual
21 functional capacity due to fibromyalgia.” Tr. 2395. The ALJ accorded this
22 opinion “little weight.” Tr. 2395.

23 The ALJ first discounted the opinion on the ground Plaintiff, at times,
24 exhibited “fair or good strength.” Tr. 2395. As discussed above, this finding is
25 legally erroneous. The ALJ thus erred by discounting the opinion on this ground.

26 The ALJ next discounted the opinion on the ground there was “evidence in
27 the file to suggest symptom magnification and poor effort.” Tr. 2395. In support
28

1 of this finding, the ALJ cited two pages of medical evidence without explaining
2 their significance or how they undermined Dr. Palasi's assessment. Tr. 2395
3 (citing Tr. 559 and Tr. 1415). As an initial matter, this was error. *See Reddick*,
4 157 F.3d at 725 (citing *Embrey*, 849 F.2d at 421-22). Further, the evidence cited
5 does not support the ALJ's conclusion. The first piece of evidence upon which the
6 ALJ relied reflects a misunderstanding of fibromyalgia: "There are *no objective*
7 *findings* on her examination today, and certainly appears that subjective complaints
8 are out of proportion as she has *no objective findings* on her examination, and she
9 does show signs of symptom magnification and exaggeration during her
10 examination today." Tr. 559 (emphases added); *see Revels*, 874 F.3d at 666;
11 *Benecke*, 379 F.3d at 590. The second piece of evidence stated only that Plaintiff
12 "was not putting any effort with foot extension and dorsiflexion and plantar
13 flexion," Tr. 1415, tests wholly unrelated to Plaintiff's fibromyalgia. The ALJ's
14 "paraphrasing of record material is not entirely accurate regarding the content or
15 tone of the record." *Reddick*, 157 F.3d at 722-23. The ALJ thus erred by
16 discounting the opinion on this ground.

17
18 Finally, the ALJ discounted the opinion on the ground that "although the
19 claimant exhibited 18/18 positive tender points in August 2016, there were no
20 subsequent exams to establish this maximum number of tender points persisted
21 thereafter." Tr. 2395. It is not apparent how this undermines Dr. Palasi's opinion.
22 Indeed, the ALJ expressly found Plaintiff's fibromyalgia to be a "severe"
23 impairment. Tr. 2384. In defense of the ALJ's decision, the Commissioner
24 contends, without elaboration, that "the apparent lack of need for follow-up or
25 regular testing is an area of discussion well within the parameters of an ALJ's
26 analysis." ECF No. 14-2 at 12. As Plaintiff correctly notes, ECF No. 16 at 7, this
27 is an improper post hoc argument. The Court reviews the ALJ's decision "based
28 on the reasoning and factual findings offered by the ALJ—not post hoc

1 rationalizations that attempt to intuit what the adjudicator may have been
2 thinking.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1225 (9th Cir.
3 2009) (citing, *inter alia*, *Snell v. Apfel*, 177 F.3d 128, 134 (2d Cir. 1999) (“The
4 requirement of reason-giving exists, in part, to let claimants understand the
5 disposition of their cases...”)). The ALJ thus erred by discounting the opinion on
6 this ground.

7 The ALJ accordingly erred by discounting the opinion.

8 **3. Desiree Ang, ARNP.**

9 The ALJ found that ARNP Ang, another of Plaintiff’s treating clinicians,
10 opined, among other things, that Plaintiff “had marked limitations in sitting,
11 standing, walking, lifting, carrying, handling, pushing, pulling reaching, stooping,
12 and crouching,” and “was limited to sedentary work.” Tr. 2398. The ALJ
13 accorded this opinion “little weight.” Tr. 2398.

14 The ALJ first discounted the opinion on the ground “such significant
15 limitations are not supported by her treatment notes.” Tr. 2398. The ALJ offered
16 no elaboration on this score – other than citing to a 306-page exhibit. This was
17 error. *See Garrison*, 759 F.3d at 1012-13 (an ALJ may not reject a medical
18 opinion “with boilerplate language that fails to offer a substantive basis for” the
19 ALJ’s conclusion) (citing *Nguyen v. Chater*, 100 F.3d 1462, 1464 (9th Cir. 1996));
20 *Burrell*, 775 F.3d at 1138. The ALJ thus erred by discounting the opinion on this
21 ground.

22 The ALJ next discounted the opinion on a ground used to discount the
23 opinions of ARNP Michel and Dr. Palasi – that the opinion is inconsistent with
24 unspecified or unelaborated “other evidence” in the record. Tr. 2398. For the
25 reasons discussed above, the ALJ erred by discounting the opinion on this ground.

26 Finally, the ALJ discounted the opinion on the ground “there was again
27 some evidence of symptom magnification during this period,” citing one treatment
28

1 note from June 4, 2019. Tr. 2398 (citing Tr. 1718). The Commissioner effectively
2 declined this defend this finding and the Court is unable to discern substantial
3 evidence necessary to sustain it. The ALJ thus erred by discounting the opinion on
4 this ground.

5 The ALJ accordingly erred by discounting the opinion.

6 **4. *Judith Harvey, M.D.***

7 The ALJ found Dr. Harvey, another treating clinician, “had to lay down four
8 to five times a day for ten minutes; could not focus more than ten to fifteen
9 minutes; would miss four or more days of work per month; and was unable to meet
10 the demands of full-time sedentary work.” Tr. 2398. The ALJ accorded this
11 opinion “little weight.” Tr. 2398.

12 The ALJ discounted the opinion on grounds used to discount the opinions of
13 ARNP Michel, Dr. Palasi, and ARNP Ang – that the opinion is unsupported by
14 treatment notes, relies on Plaintiff’s subjective complaints, is inconsistent with
15 unspecified and unelaborated “other objective evidence,” and is undermined by
16 “some evidence of symptom magnification during this period.” Tr. 2398. For the
17 reasons discussed above, the ALJ erred by discounting the opinion on this ground.

18 The ALJ accordingly erred by discounting the opinion.

19 **5. *Gordon Hale, M.D.***

20 The ALJ afforded “great weight” to Dr. Hale’s opinion, at the
21 reconsideration level, that Plaintiff “could lift and/or carry up to twenty pounds
22 occasionally and ten pounds frequently; stand and/or walk for a total of six hours
23 in an eight-hour workday; sit for a total of about six hours in an eight-hour
24 workday; push and/or pull as much as she could lift and/or carry; frequently climb
25 ramps and stairs; frequently climb ladders, ropes, or scaffolds; frequently balance,
26 kneel, crouch, and crawl; occasionally stoop; and must avoid concentrated
27 exposure to vibration.” Tr. 2394. Although the ALJ was not required to provide
28

1 reasons in support of incorporating a medical opinion into the residual functional
2 capacity determination, *see Turner v. Comm’r of Soc. Sec. Admin.*, 613 F.3d 1217,
3 1223 (9th Cir. 2010), because the ALJ erred by discounting the medical opinions
4 discussed above, the ALJ must also reassess this opinion anew on remand.

5 **B. Plaintiff’s Testimony.**

6 Plaintiff contends the ALJ erroneously discounted her testimony. ECF
7 No. 10 at 7-13. Where, as here, the ALJ determines a claimant has presented
8 objective medical evidence establishing underlying impairments that could cause
9 the symptoms alleged, and there is no affirmative evidence of malingering, the
10 ALJ can only discount the claimant’s testimony as to symptom severity by
11 providing “specific, clear, and convincing” reasons supported by substantial
12 evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). The Court
13 concludes the ALJ failed to offer clear and convincing reasons to discount
14 Plaintiff’s testimony.

15 The ALJ first discounted Plaintiff’s testimony as inconsistent with the
16 medical evidence. Tr. 2392-93. However, because the ALJ erred in assessing
17 medical opinions, and necessarily failed to properly evaluate the medical evidence,
18 as discussed above, this is not a valid ground to discount Plaintiff’s testimony.

19 The ALJ also discounted Plaintiff’s testimony as inconsistent with her
20 “routine and conservative treatment.” Tr. 2392. Substantial evidence does not
21 support this finding. The ALJ’s finding fails to sufficiently explain *how* this is a
22 reasonable inconsistency. Indeed, the ALJ explicitly – and contradictorily – noted
23 Plaintiff “tried different medications for her fibromyalgia without relief of her
24 symptoms.” Tr. 2392. Moreover, and relatedly, it is well-settled that there is “no
25 cure” for fibromyalgia. *Benecke*, 379 F.3d at 590. The ALJ thus erred by
26 discounting Plaintiff’s testimony on this ground.

27 The ALJ accordingly erred by discounting Plaintiff’s testimony.
28

VII. CONCLUSION

This case must be remanded because the ALJ harmfully misevaluated the medical evidence and Plaintiff's testimony. Plaintiff contends the Court should remand for an immediate award of benefits. Such a remand should be granted only in a rare case and this is not such a case. The medical evidence and Plaintiff's testimony must be reweighed and this is a function the Court cannot perform in the first instance on appeal. Further proceedings are thus not only helpful but necessary. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015) (noting a remand for an immediate award of benefits is an "extreme remedy," appropriate "only in 'rare circumstances'") (quoting *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014)).

Because the ALJ misevaluated the medical evidence and Plaintiff's testimony, the ALJ will necessarily need to determine whether the RFC needs to be adjusted. For this reason, the Court need not reach Plaintiff's assignment of error concerning the RFC. *See PDK Labs. Inc. v. DEA*, 362 F.3d 786, 799 (D.C. Cir. 2004) ("[I]f it is not necessary to decide more, it is necessary not to decide more.") (Roberts, J., concurring in part and concurring in the judgment). Further, because this case is remanded on multiple, independent bases, the Court assumes without deciding the ALJ erred at step one and accordingly instructs the ALJ to clarify the seemingly internally-inconsistent step one finding on remand.

On remand, the ALJ shall reevaluate the medical opinions addressed herein; reassess Plaintiff's testimony; revisit whether Plaintiff engaged in an unsuccessful work attempt at step one; and complete the remaining steps as appropriate.

Having reviewed the record and the ALJ's findings, the Commissioner's final decision is **REVERSED** and this case is **REMANDED** for further proceedings under sentence four of 42 U.S.C. § 405(g).

Therefore, **IT IS HEREBY ORDERED:**

- 1 1. Plaintiff's motion to reverse, **ECF No. 10**, is **GRANTED**.
- 2 2. Defendant's motion to affirm, **ECF No. 14-2**, is **DENIED**.
- 3 3. The District Court Executive is directed to file this Order and provide
- 4 a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for
- 5 Plaintiff and the file shall be **CLOSED**.

6 **IT IS SO ORDERED.**

7 DATED September 23, 2024.



11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

James A. Goeh

JAMES A. GOEKE
UNITED STATES MAGISTRATE JUDGE